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THE NATIONAL ALLIANCE TO END HOMELESSNESS, INC.

December 15, 1997

Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
United States Department of the Treasury
Room 420
401 14th Street SW
Washington, DC 20227

re: Comment to proposed rule on Electronic Funds Transfer

Dear Ms. Johnson:

This letter contains comments by the National Alliance to End Homelessness on the proposed rule implementing Section 31001(x) of the Debt Collection Improvement Act of 1996, to be codified at 31 CFR Part 208 (RIN 1510-AA56). The Alliance is a nonprofit membership organization, whose nearly 2,000 members include organizations and individuals from around the country providing services to homeless people, working to solve the problem of homelessness.

We believe that many homeless people will be directly affected by Electronic Funds Transfer (EFT), since many have severe disabilities and must rely on Veterans' Administration benefits and/or Supplemental Security Income from the Social Security Administration. We are concerned about the poorest individuals in the poorest communities. We would like to see EFT provide an opportunity to give people better access to banking services, not make the lives of homeless people, particularly those with disabilities, more difficult.

With this goal in mind, we submit comments on the following aspects of the proposed rule.

WAIVERS.

Mental disabilities should be grounds for waiver. The single most glaring departure from Congressional intent in the proposed rule is the failure to consider hardships due to mental disabilities as grounds for a waiver. It is difficult to see why an agency of the federal government would attempt to justify barring people with some disabilities from individualized consideration of hardship, while offering such accommodation to others. The justifications offered in the Treasury analysis of the proposed rule do not take

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adequate account of the realities of existence for numbers of low-income people with mental disabilities.

It is true, for example, that the Social Security Administration allows SSI payments to be made to a "representative payee" on behalf of the recipient. There is no requirement, however, that a representative payee be employed, and no funding to pay people to perform this (often burdensome) service. The result is that many people with mental disabilities receive benefits in their own names, and have developed methods that work for them to get their checks cashed and their expenses met. Such an arrangement may involve a landlord or merchant who is willing to take the time and trouble to perform this service. It may also include a commercial check casher whose fee may exceed that of a bank, but who may be willing to provide extra care that the recipient would be unable to obtain from a distant bank, not to mention an ATM.

The fallacy in Treasury's approach to this question is apparent in the following passage from the analysis: "These factors [including mental disability] can affect an individual's ability to use any method of payment, whether check or EFT, and, therefore, there is no need to provide waivers for these categories." This manner of lumping together all people with a class of disabilities is at the heart of the problem that statutes like the Americans with Disabilities Act set out to solve. It is absolutely true that many and perhaps most people with mental disabilities could be made better off, or at least no worse off, under EFT. The point of a waiver provision, however, is to provide for the unusual case. For those with physical disabilities, Treasury rightly leaves it up to the individual, with assistance from his or her own support system, to determine whether the hardship outweighs the benefit. There is no good basis for denying this same consideration to those with mental disabilities.

Language and literacy issues should be grounds for a waiver. The same considerations apply to the other categories contemplated as grounds for waiver by Congress. Contrary to the analysis provided by Treasury, the ability of an individual with language or literacy problems to endorse a check does not mean that the same individual will be able to maintain a bank account and deal with an ATM. Especially given the clear expressions of Congressional intent in this regard, individualized waivers will function better than a "one-size-fits-all" approach.

ETA ACCOUNTS.

The ETA accounts provide the opportunity to significantly increase utilization of the banking system by low-income people. It is important to keep in mind that low utilization is not strictly a matter of "lack of education." On the contrary, many people from low-income neighborhoods do not use commercial banks because banks do not provide adequate services in those neighborhoods. If ETAs are to provide a benefit to low-income people, rather than force upon low-income people a service that they have already

determined not to be worth the cost, then the ETAs must do a better job than commercial banks now do of serving these individuals. This goal should be reflected in the final rules.

Explicit accessibility criteria needed for ETA contractors. In order to ensure that institutions that win ETA contracts provide improved services, it is necessary to include in the rule basic criteria relating to accessibility of services, the major problem with existing banking services in low-income neighborhoods. Among the criteria should be a demonstrated commitment to customer service; multilingual capability in locations where that is an issue; demonstrated commitment to providing full accessibility to people with different kinds of disabilities; and a willingness to commit to full geographic access through new ATMs and POS facilities in low-income neighborhoods.

Enforcement authority should be clearly delineated. The regulations should also specify the enforcement authority that exists, so that customers who do not receive satisfactory service from ETAs can obtain ready assistance in resolving these difficulties.

Customer choice provides the benefits of competition. A lesson from the experience of managed care in providing health care to low-income people is that Treasury should contract with more than one provider in each locality, with customers having the ability to change if they are not satisfied with the services provided. In addition, a factor in awarding ETA contracts should be each institution's willingness to provide a range of service packages to customers at various prices, either within the ETA structure or as "voluntary" accounts that are available to ETA customers.

ETAs should be available to customers who already have less attractive accounts. There is some concern that ill-informed check recipients will be frightened by the specter of EFT into opening accounts at terms that are unfavorable. A guard against this would be to allow a customer who already has an account to have access to the ETA nevertheless. At a minimum, a customer whose private account does not meet the basic regulatory criteria for accessibility or is significantly more costly than the ETA should be able to switch.

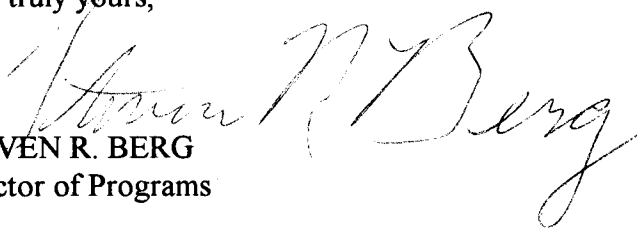
LEGAL ATTACHMENT/LEVYING/GARNISHMENT.

One concern many low-income people have about bank accounts is that the accounts would be subject to levy or attachment. Supplemental Security Income funds, for example, are exempt under federal law from attachment, levy or garnishment. A bank account that contains only funds obtained from SSI should also be exempt. It has been known to happen, however, that a creditor is able to persuade a judge to place a hold on such an account, requiring the disabled or elderly customer to go to court to have the garnishment removed. The customer could be left with no money for rent, food or heat in the mean time. It would go a long way toward obtaining compliance with EFT if the regulations specified that all bank accounts containing only EFT funds that are not subject to attachment would be exempt from levy. In the context of ETAs, the contracts should

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specify that the banks have the obligation to go to court immediately to lift levies inadvertently placed by judges on exempt accounts.

Very truly yours,


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Director of Programs